CASE and COMMENT

SUMMER 1936
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In This Issue

« THE ONE THAT GOT AWAY »

HAVE you ever refused a case or compromised for a minimum amount because of uncertainty as to its ultimate outcome, only to stumble upon an annotation that indicated a clear right to a substantial recovery?

If so, whether angler or not, you can sympathize with this fisherman who tells about "the one that got away".

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A novel feature of the Annual Meeting of the Illinois Bar Association was the invitation to law publishers to display their works. Secretary Stephens is here seen showing General Clinnin, of Chicago, the new "AMERICAN JURISPRUDENCE," at the exhibit of the Lawyers Co-Operative Publishing Co., of Rochester, N. Y.

Comments on the Minimum Wage Law Case

(Morehead v. New York, 80 L. ed. Adv. 921)

1. Are Minimum Wage Laws Necessarily Unconstitutional?

BY EDWIN STACEY OAKES,
Editor U. S. Supreme Court Reports, Law. ed.

On the day following the announcement of the decision of the Supreme Court of the United States that the New York Minimum Wage Law for Women is unconstitutional, many newspapers carried, under such headlines as "Wage Ruling Stirs Wide Indignation," comments of various persons in public life to the effect that the Court has created a "No Man's Land" to which neither state nor federal legislation may extend; that the Supreme Court has erected a barrier in the path of necessary social reform, etc.

A reading of the opinions in this case shows this criticism, sincere though it may be, to have been uninformed as to the scope of the decision. A statement of the various views expressed by the majority and minority of the Court in a form intelligible to the man in the street is accordingly desirable.

The majority opinion says in substance that only the question raised by those who carried the case to the Supreme Court may be considered by it; that such question is whether the New York statute is vitally dissimilar from the District of Columbia statute theretofore held unconstitutional by the Supreme Court, and not whether the Supreme Court's earlier decision was wrong; that the Supreme Court, being bound by the construction put upon a state statute by the state courts, must accept the view of the New York Court of Appeals that the New York statute is essentially the same as the District of Columbia statute; and, consequently, that the New York Court of Appeals rightly held it unconstitutional.

The opinion was further expressed that as the evil at which the New York statute was aimed is the same in the case of men as of women, and as men in need of work are as likely as women to accept the low wages offered by unscrupulous employers, a statute prescribing minimum wages for women alone "would unreasonably restrain them in competition with men and tend arbitrarily to deprive them of employment and a fair chance to find work." In this the court accepted the contentions of counsel appearing for a number of women's organizations and labor unions.

Chief Justice Hughes, dissenting, was of the opinion that the New York Court of Appeals had not construed the New York statute to be essentially like the District of Columbia statute, but rather to have construed the opinion of the Supreme Court in the case involving the District of Columbia statute as applicable to the New York statute; that, accordingly, the Supreme Court was free to determine whether the two statutes differ, and that there are substantial differences, so that the Supreme Court was free to consider the validity of the statute on its merits; and that, the end being legitimate and the means appropriate, the statute should be upheld

In this the other dissenting justices concurred, but were further of the opinion that the differences between the New York and District of Colum-

bia statutes should not be made the sole basis of decision, and that the case in which the District of Columbia statute was held invalid has been in effect overruled by later decisions of the Supreme Court in which state regulation of prices and state regulation of other matters in the interest of those employed has been upheld.

This summary of the views expressed serves to indicate that the difference of opinion between the majority and minority of the court, so far as the validity of the minimum wage legislation is concerned, is as to whether a statute setting up a suitable standard for the ascertainment of the minimum wage may be applicable to women alone.

Inferentially, a statute making the fair market price of the service rendered the test of the permissible minimum wage and applying to both sexes alike, would avoid the constitutional objections raised to the New York and District of Columbia statutes.

II. The No Man's Land Provisions

BY BERNARD KILGORE,
Washington Correspondent of the Wall Street Journal

(Reprinted by permission from the Journal of June 5th.)

SOME people profess to be greatly surprised to learn that there are things that neither the Federal Government nor the governments of the several states are allowed to do under the Constitution. They talk about this "No Man's Land" as though it were something just created by the Supreme Court's decision in the New York minimum wage law case.

"Here," they point out with a show of astonishment, "is an awful predicament for us to be in. We cannot, in the light of the NRA decision, regulate wages from Washington; and now the Court says we cannot regulate them from Albany and Indianapolis and Topeka either."

Of course, most of these people actually know better. The "No Man's Land" is nothing new. There have been, for a long time, a number of things that neither the Federal nor state power could be used to do. All that has really happened is that the Supreme Court has applied the rule in a specific case and some of those who think the Constitution is out of date anyway are using this illustration for advertising purposes.

This "No Man's Land" has been there for some 150 years. The Constitution and the amendments thereto say, if one may revert to the parlance, that there are certain fields into which no government, state, federal or local, can stick its nose. Perhaps the American people will change their minds but, to date, those who have proposed to change the situation have not made any progress; indeed they have been regarded with more than a little suspicion.

* * *

It so happens that there are provisions in the Constitution which prohibit the taking of a person's "life, liberty or property, without due process of law" by either the Federal Government or the state governments. Exactly the same language is found in the fifth amendment to the Constitu-

tion, which applies to the Federal Government, as is found in the fourteenth amendment, which applies to the states.

The only valid excuse for arguing about the matter at all is the undeniable fact that "due process of law" is sometimes difficult to define. In the New York State wage control law case, for example, there was a sharp division of opinion within the Supreme Court itself. Five members, constituting a majority, held that "due process" had been violated. Four members thought it had not been violated. There are equally sharp differences of opinion among experts and laymen everywhere.

But the remedy for this situation, if it needs to be remedied, does not lie in denouncing the Court or talking about the "No Man's Land." Perhaps another state law more carefully framed would meet the constitutional test. If not, the way is always open to a constitutional amendment which would specifically authorize states—or even the Federal Government—to do what the people want done.

* * *

"Due process of law" is not a subject which we laymen are well qualified to discuss. The average citizen, for instance, is inclined to think that if a state legislature goes through the usual, formal routine of passing a law, and the executive department of the state enforces that law in the customary manner, that is "due process."

This is not necessarily true. More than a hundred years ago Daniel Webster expressed it this way: "The meaning is that every citizen shall hold his life, liberty and property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of enactment is not therefore to be considered the law of the land."

Since mere enactment of a statute is not "due process" in the established sense of the phrase, it follows that to define "due process" it is necessary to take into consideration traditions, history and such vague but important concepts as the fundamental principles of individual liberty. "Due process" is violated when governments abuse their powers by unreasonable, unfair or arbitrary legislation.

* * *

It naturally follows from this that honest differences of opinion frequently develop when such doctrines as "freedom of contract" under the general "due process" concept are to be applied in specific instances. But those differences should be recognized as basically honest. And the function of the Supreme Court, to pass upon laws in the light of the Constitution as the Court reads it, certainly is one that the people can ill afford to abolish. Otherwise, they will have no Constitution.

Nor does it do any particular good to poke fun at the doctrine of "freedom of contract." Irritated reformers frequently say: "Yes—freedom to work for a starvation wage. Freedom of women and children to slave for a pittance and live in misery."

These gentlemen are oft-times striving for objectives that a large majority of the whole people would like to see attained. They are dangerous only to the extent that they count too much on the wisdom and power of governmental agencies and lose sight, in the enthusiasm of the moment, of the basic constitutional protection which the American form of government is designed to maintain for the individual citizen.

To him, this "No Man's Land" represents one of the highest attainments of modern, liberal political science.

More Bars to the Bar

BY MITCHELL DAWSON,
of the Chicago Bar

(Reprinted from The Rotarian for May, 1936)

"You have more lawyers and more crime in proportion to your population than any other country in the world," said a European visitor to the United States. As an American lawyer, I deeply resented what seemed an unwarranted slur against my profession.

"Do you mean," I asked, "that the prevalence of crime is somehow due to the number of lawyers?"

"Not exactly," he smiled, "but it is significant that in spite of your swarms of lawyers, you have not succeeded better in curbing crime."

While there may be some doubt whether the United States is really the world's greatest crime producer, it certainly heads the list in its output of lawyers. With three times the population of Great Britain, the United States has seven times as many lawyers. In France, the lawyers run about one to every 4,500 persons; in Sweden, one to every 16,000; but in the United States, one person out of every 750 has been admitted to the bar!

And still they come. Forty thousand young men and women are enrolled this year in law schools of the United States. More than 9,000 annually receive licenses to practice law, and enter the professional sweepstakes with golden hopes. The lawyers, in fact, seem to be multiplying faster than their clients, and it looks as though every American will soon be his own lawyer as well as his only client.

The lawyer population of the United States is now estimated by the American Bar Association at 175,000. It must be admitted that this great army is not 99 and 44/100 per cent pure. Unfortunately we have with us a group who may be called "marginal lawyers" because they cling to the ragged edge of the profession, engaging in devious, dubious, and disreputable practices. The damage they do is so far out of proportion to their actual number, which is small, that the public is constantly clamoring against the whole legal profession. Small wonder then that some lay critics insist that the more lawyers there are, the more crime there will be.

This, of course, is absurd. There *is* a causal connection between *bad* lawyers and the prevalence of crime, but the proportion of bad lawyers to the entire profession is steadily declining, thanks principally to the efforts of the organized bar. It would decline much more rapidly if the public fully understood the problem and if lay agencies were lined up to reinforce the bar in solving it.

The undesirable lawyers are of two sorts: (1) the deliberately unscrupulous, who take unfair advantage both of clients and the courts, but who are too clever to be easily caught in a violation of law for which they can be disbarred or otherwise prosecuted, and (2) the misfits, who should never have entered the profession and drift into vicious practices because of economic pressure.

Members of the first group will to some extent always creep into the profession. There is no sure way of identifying and eliminating the potentially crooked individual when he is a candidate for admission to the bar—especially if he is smart. His character is not fully demonstrated until he has practiced law for a number of years. His fellow lawyers gradually get to

know him for what he is, but as he has a tough hide their opinions don't bother him. He has no trouble in finding clients who appreciate his peculiar gifts.

There are plenty of people who believe with a certain New York shyster that "law ain't books, law's tricks." Such clients prefer a lawyer whom they believe will "out-smart" his adversaries without being too finicky about the rules of law and ethics. They never stop to consider that a lawyer of that sort may find good pickings in the pockets of his own clients.

The spectacularly crooked lawyer, with a thousand and one tricks in his bag, is quite likely to become a popular hero, especially if he practices in the criminal courts. He can then snap his fingers at his respectable brethren. At any attempt to disbar him, he will raise the cry that he is being crucified; and his idolatrous public is always certain to sympathize with him.

We have, in fact, a very serious situation to contend with in the attitude of the general public both toward lawyers and the processes of the law. European observers of the Hauptmann trial have commented particularly on the extraordinary prominence which it received as a national spectacle. They were shocked not so much over any of the incidents of the trial as by the exploitation of the case by the press, the radio and the talkies—to the degradation of the entire system of justice.

The public view of the law and the legal profession being thus distorted, it is not strange that thousands of youngsters dream of legal careers, imagining themselves in the rôle of criminal or divorce lawyers living exciting lives of battle, adventure, mystery, and sex intrigue, and that many fond parents encourage their children to study law under the delusion that a legal sheepskin is a passport to El Dorado.

It is true that excitement and variety are inherent in certain types of practice and that huge fees are sometimes reaped by lawyers; but the majority of lawyers laboriously pan the streams of the law all their lives only to extract a modest living. Unfortunately most laymen know very little about the aptitudes and conditions essential to success at the bar and nothing at all about the hard work, responsibility, nervous strain, and financial uncertainty of the average lawyer's life. As a consequence, a vast number of young people are set to studying law who have not the remotest chance of succeeding in the legal profession.

It is from these unfortunates that our second category of marginal lawyers—namely, the misfits—is constantly being recruited. Consider, as an example, the case of Tony Martin whose talents were clearly mechanical. At the age of ten he assembled a flivver from used parts and made it run. But his father was a mechanic and saw no future in that trade. He decided that Tony, his eldest son, should be a lawyer. The whole family scraped and saved to put the boy through high school and law school. After his third attempt, he passed the state bar examination and got his license.

On the strength of this he married, but his father refused to support him any longer. Wasn't he a lawyer now? Why didn't he go out and make a lot of money as all lawyers do? Tony discovered that many of them didn't, and that the only way he could acquire any income at all from the law was by resorting to shady practices. He went in for ambulance-chasing and police court work. With the assistance of policemen and petty officials, with whom he splits his fees, he now ekes out a dishonest living.

Tony is only one of many equally

unhappy souls whom unkind chance and bad judgment have thrown into the practice of the law. These misfit lawyers are not only a menace to themselves but to the public. In their struggles to exist, they find it hard to remain honest. They are beset by the temptation to exploit what few clients they can get by putting in too much time on their business, starting unnecessary suits, defending hopeless ones and being careless about money. They drift almost inevitably into ambulance chasing, the disreputable end of the criminal practice, the fixing of cases, and other rackets. Even if they go straight, their ineptitude is a peril to their clients. A little legal learning is a dangerous thing, as many a layman has found when he relied on his own ideas about the law. A lawyer without ability is sure to make serious, costly mistakes.

The public pays the bill for maintaining these marginal lawyers—both the smart, crooked ones and the incompetents—but no lay agency has made any serious effort to solve the problem of getting rid of them except by howling hysterically that the bar should clean house. The organized bar has been engaged in that very task for many years. Its efforts have been twofold: (1) to try to keep the morally and mentally unfit from entering the profession, and (2) to rid the bar of those dishonest and unethical members who have managed to creep into it.

The first of these undertakings has gone forward with remarkable success. The bars to the bar have been steadily raised through a vigorous campaign by the American Bar Association, supported by many State associations, for higher standards of admission to the bar.

In 1921, Kansas was the only State requiring two years of college of candidates for licenses. Now 29 States have such a requirement. In 1921, 20 States had no general educational requirement for bar admission at all. Now only 2 States remain which require no general education.

The days are almost gone forever when the legal aspirant could read Blackstone and pass his bar examination by treating the members of the State Supreme Court to a round of drinks and explaining the rule in Shelley's case as meaning that the lawyer gets the oysters and the client gets the shells. Only the democracies of Arkansas and Georgia now hold that a lawyer needs no general education.

Nor have the character qualifications of prospective lawyers been overlooked. In the majority of States, every candidate for admission must pass the scrutiny of a committee as to his character and general fitness.

Nevertheless, some undesirables do get by. To weed them out is the work of the bar association grievance committees which stand ready to hear the complaints of citizens against particular lawyers and to institute disbarment proceedings where the evidence warrants it.

The organized bar has thus provided machinery for eliminating the marginal lawyer. But this machinery can undoubtedly be strengthened by other devices. One of these is known as the "incorporated bar." It consists of requiring every lawyer to become a member of an incorporated body which includes all the lawyers in his State. He must pay dues and submit to the discipline of the association. Through such an organization the bar achieves a unity and effectiveness which is impossible where membership in a bar association is not compulsory. The incorporated bar idea is gaining strength rapidly. Seventeen States have adopted it.

Parallel with the movement for incorporated State bars goes the plan of the American Bar Association for coordinating or integrating the work of

all local bar associations on a national scale.

But the bar cannot carry on alone. It needs the active support and cooperation of laymen such as are found in Rotary Clubs. With their help it might work out a program somewhat as follows: First, to provide young men and women who contemplate entering the law with full and accurate information as to the conditions which confront them and the particular aptitudes required for success.

Secondly, the work of the organized bar in raising the standards for admission to the bar must be backed by public opinion. Unfortunately every attempt to improve educational requirements or to increase the severity of bar examinations has been met with the cry that it is undemocratic and that it keeps the poor boy from becoming a lawyer. Actually the opportunities of the poor boy have multiplied a thousandfold since the days of Abraham Lincoln. You can't keep the Lincolns out by raising standards. Only the poor in morals, talents, brains, and stamina will be eliminated and their elimination would be a kindness to themselves as well as to the public.

Thirdly, the public should be organized to assist the bar in disciplining its own members. At present almost every complaint filed against a lawyer is motivated solely by the self-interest of the complainant, who rightly or wrongly is trying to recover money. If he gets what he is after, he drops the complaint. The misconduct of lawyers in criminal (and civil) cases goes unscathed unless it is so flagrant that the prosecuting attorney can bring a criminal charge against the offender. The bar needs the support of the public in reporting and prosecuting serious breaches of law by attorneys, whenever they occur.

And last, but most important, a more constructive attitude on the part of the public toward the legal profession must be developed. The majority of lawyers are honest, hard-working men doing their job to further the interests of their clients within proper limits. Their errors for the most part are the errors of over-zealous advocacy. We will never improve the situation by the continual denunciation of the entire bar, which is the perennial pastime of many editorial writers and other lay critics, nor on the other hand by exalting the crooked lawyer as a hero—which is the sport of the talkies and the yellow press. Intelligent lay agencies must meet the lawyers at least half way. They must organize to act jointly with bar associations in a common effort to achieve a more honest and efficient administration of the law and justice.

Alternative Method to Impeachment for Trial of Inferior Federal Judges

BY HON. WILLIAM GIBBS McADOO

(Condensation of remarks in United States Senate, April 23rd, 1936)

THE question which confronts us upon the very threshold of the inquiry is whether, under the Constitution, the impeachment process is exclusive; whether, in other words, the Constitution requires that judges

guilty of improper conduct in office shall be removed by impeachment, and by impeachment alone.

I contend that the Constitution does not so require; that impeachment is not the sole constitutional method for the removal of faithless judges; and that the Constitution leaves the door open for legislative action by the Congress to provide supplementary and additional methods, if in its judgment, it should deem such action desirable.

This conclusion follows clearly from a scrutiny of the pertinent provisions of the Constitution itself.

Let it first of all be noted that, contrary to a widely prevailing idea to the contrary, there is no separate provision in the Constitution for the impeachment of judges as distinguished from other officers of government. The constitutional basis for impeaching judges is found in section 4 of article II which does not mention judges by name, but which applies equally to all civil officers of the United States. This includes judges only because they fall within the general description of civil officers. The language of the provision is as follows:

"The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

In view of the fact that the impeachment process thus applies to judges only because they are civil officers, it must follow, if we are to conclude that impeachment is the exclusive method for removing judges, that it is also the exclusive method for removing all civil officers. This is obviously not the case. Clearly, civil officers other than judges may be removed by other means than impeachment. This question, so far as relates to civil officers generally, was squarely presented to the Supreme Court in the case of Shurtleff v. United States (189 U. S. 311 (1902)); and the answer which the Court gave to it is as follows (at p. 317):

"By the fourth section of article II of the Constitution it is provided that all civil officers shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. No one has ever supposed that the effect of this section was to prevent their removal for other causes deemed sufficient by the President. No such inference could be reasonably drawn from such language."

Since it is thus settled that the provisions of section 4 of article II do not, in and of themselves, provide an exclusive procedure for removing from office civil officers, including judges, the only question which remains is whether, with respect to judges, there is some other and different provision of the Constitution which prevents the application to them of any process other than impeachment.

I do not propose to enter upon a discussion of the question as to whether or not Congress could constitutionally confer on the President the power to remove judges of the lower Federal courts for cause, similar to the power which may be conferred upon him to remove quasi-judicial officers. Whatever might be the conclusion as to constitutionality—and, in view of our doctrine of "separation of powers," a serious constitutional doubt may be raised as to whether the President could be given such a power over the judiciary—I shall not discuss that question, because, apart from all questions of constitutionality, no President would care to be charged, or should be charged, with the responsibility of passing on the conduct of members of a great co-ordinate branch of the Government.

The Houses of Congress comprising the legislative branch have a well-

recognized power to protect their integrity by the process of expulsion, which is in substance nothing but an exercise of the power of removal of their own Members for misconduct. Analogous to this is the power of the President, whether under statute or otherwise, to preserve the integrity of the administrative arm of the Government by exercising the power of removal with respect to subordinate executive officers. In view of these clearly established powers in both the legislative branch and the executive branch to remove their own unworthy members by different processes than impeachment, it seems clear that the judiciary may constitutionally be authorized to exercise a power unless the obstacle of some specific constitutional provision stands in the way.

Two such obstacles may conceivably be suggested. In the first place, it is well established that courts of the United States erected under the judiciary article of the Constitution can exercise only judicial powers. The first question which arises, therefore, is whether the power to remove a judge for misconduct in office is a judicial power.

On this point we are necessarily without the benefit of direct precedents from the Federal courts, because no such power has ever been exercised, or even attempted; but it would seem entirely clear, both on principle and on the authority of the precedents drawn from the State courts, that such a power of removing judges is a judicial power. From the standpoint of principle, it is to be noted that the Supreme Court has held that where a statute authorizes the President to remove executive officials for specified causes, the power of removal is judicial in such sense that it cannot be exercised without notice to the official in question and until he has been given an opportunity to be heard (Shurtleff v. United States, 189 U. S. 311).

I think the Congress has the power to create a judicial tribunal which may deal with judges accused of abuse of their trust.

In many States, and I may specifically name Maryland, Indiana, Louisiana, New York and Texas, the upper courts are given authority to remove inferior judges for misconduct in spite of the fact that, in some of those States, the State Constitution is explicit in confining the courts to the exercise of purely judicial functions.

That the exercise of the power of removal from office for misconduct is not per se beyond the competence of the Federal courts is clearly proved by their well-established practice of exercising such a power in the matter of the disbarment of attorneys for misconduct, which is nothing more than the removal of officers of the court from office, because it is well established that attorneys are "officers of the court." An attorney, an officer of the court, cannot be removed without trial, without opportunity to be heard, and without the exercise of judicial power.

It has long been recognized in the Federal courts that this power is a judicial power, and I may refer specifically to the case of Ex parte Garland (4 Wall. 333), decided in 1886, where the Supreme Court said that attorneys hold their office during good behavior and that "their admission and their exclusion are the exercise of judicial power."

A second objection which might conceivably be raised against the exercise by the Federal courts of power to remove members of the Federal judiciary is that under judiciary power of the Constitution—Article III, section 2—it has been held that the courts are limited to the adjudication of cases or controversies "in law and equity." The question, therefore, arises wheth-

er a proceeding for the removal of a judge would be a case or controversy "in law and equity" within the meaning of the Constitution. The answer to this question would likewise seem to be clearly in the affirmative. The term "all cases in law and equity" as used in the Constitution has been held to include all types of proceeding known to the common law as the common law existed at the time of the adoption of the Constitution.

One of the historical forms of procedure at common law is the writ of quo warranto. This is the traditional common-law procedure for determining the right of a person or corporation to hold an office or franchise conferred by the State. The essential feature of quo warranto is that it results in a judgment of ouster from the office or franchise. While ordinarily quo warranto is used to determine the legal questions regarding title to the office, there is sufficient authority to the effect that it may also be used to oust a person from office for misconduct (Commonwealth v. M'Williams, 11 Pa. 61; State v. Darnell, 123 Kans. 643; State v. Redman, 183 Ind. 332).

The Indiana case which I have just cited is directly in point in the present connection. The Indiana Constitution provides that any judge who shall have been convicted of corruption or other crimes may be removed from office by the Supreme Court. The details of the procedure for such removal had not been provided by the legislature. It was held that the proper form of proceeding was one analogous to quo warranto, and that in such a proceeding the Supreme Court might remove a judge.

Since, as I have shown, the power to remove judges for misconduct is a judicial power, and since a proceeding for removal is directly analogous to quo warranto, which is a proceeding known to the common law prior to the adoption of the Federal Constitution, it follows that such a power of removal could validly be exercised by a Federal court established under article III of the Constitution.

With these points established, there exists no constitutional objection to the institution by Congress, in addition to the procedure of impeachment, of a method for the removal of faithless judges by the courts of the United States themselves. I raise no question here as to whether such a procedure could be entertained by the Supreme Court of the United States and whether that Court has, or could be given, the power to purge itself by the removal of a faithless member because the question with which I am dealing does not concern the Supreme Court. It relates only to the inferior Federal courts. I assert, therefore, that it would be constitutional for Congress to establish a procedure for the Federal courts to try members of the inferior Federal judiciary for misconduct and to remove them from office if found guilty.

Again, I say that if such a procedure should be adopted it would not exclude the process of impeachment, which could still be resorted to if the Congress desired that that method should be employed.

Have You Ever Gambled?

"I WAS *not aware, until this case that . . . the determinations of judicial tribunals were made the subject of policies at Lloyds.*"

—HALSBURY L. C. in *Seaton v. Burnand* (1900) A. C. 135 at page 140 (H. L. Eng.)

Current U. S. Decisions

SELECTED FROM L. ED. ADVANCE OPINIONS

A.A.A.

In United States v. Butler, 80 L. ed. Adv. 287, the Federal Agricultural Adjustment Act was held an unconstitutional encroachment on the reserve power of the states. See also the companion case, Rickert Rice Mills v. Fontenot, 80 L. ed. Adv. 355, ordering the return of certain processing taxes.

T.V.A.

In Ashwander v. Tenn. Valley, authority 80 L. ed. Adv. 427, it was held that the Federal government may convert the water power developed at dams constructed in exercise of its power to improve navigation, or provide for National defense, into electric energy, which it may sell at place of production or elsewhere.

The Guffey Coal Bill Case

In Carter v. Carter Coal Co., 80 L. ed. Adv. 749, the Bituminous Coal Conservation Act of 1935 was held invalid on two grounds. First, the power of congress under the commerce clause did not extend to the establishment of minimum wages, and regulation of hours and conditions of employment sought under the act; second, the particular act in question incorporated an improper delegation of legislative power.

The Municipal Bankruptcies Case

In Ashton v. Cameron County, 80 L. ed. Adv. 910, the provision of the Bankruptcy Act for municipal debt readjustment was held beyond the power of congress on the theory that it was an invasion of the sovereignty of the states.

State Minimum Wage Law Decision

In Morehead v. New York, 80 L. ed. Adv. 921, the New York minimum wage law for women was held unconstitutional. An interesting discussion of this decision by Mr. Edwin Stacey Oakes, Editor of U. S. Reports, L. ed., and Mr. Bernard Kilgore, Washington Correspondent for the Wall Street Journal, will be found beginning on page 2 of this issue of Case and Comment.

Burden of Proof as to Jurisdictional Amount

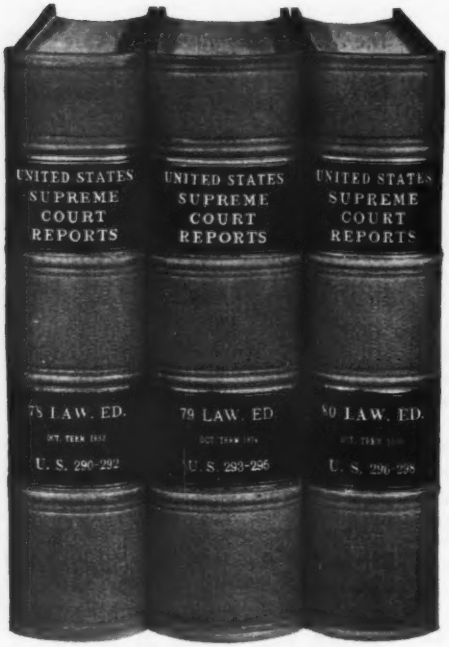
An important question of Federal Practice was decided in McNutt v. General Motors Acceptance Corporation, 80 L. ed. Adv. 816, holding that the burden of proving existence of jurisdictional amount is on plaintiff. Prior to this it was generally supposed that it was on the defendant challenging the jurisdictional amount. A practical result of this decision may be to limit the number of cases where it is sought to acquire jurisdiction under the diversity of citizenship.

Dr. Johnson Again

"SIR, *it is wrong to stir up law suits; but when once it is certain that a law suit is to go on, there is nothing wrong in a lawyer's endeavouring that he shall have the benefit, rather than another.*"

(BOSWELL'S *Life of Johnson*, aetat. 67, 1776)

"Historic" is an Overworked Word—
But Here No Other Word Would Do



These three volumes contain more material of vital and practical import than any other three volumes of reports ever published. Do you doubt it? Then read the list of cases opposite.

- **Minnesota Moratorium Case**
- **New York Milk Case**
- **Gold Clause Cases**
- **Hot Oil Case**
- **N. I. R. A. Case**
- **Frazier-Lemke Case**
- **Humphrey Case**
- **Railway Pension Case**
- **Railroad Re-Organization Case**
- **Scottsboro Case**
- **Military Training Case**
- **Mooney Case**
- **Huey Long Case**
- **A. A. A. Case**
- **T. V. A. Case**
- **The Guffey Coal Act Case**
- **The Municipal Bankruptcy Case**
- **The New York Women's Wage Act Case**

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A. A. A. Act — *constitutionality.* In United States v. Butler, — U. S. —, 80 L. ed. (Adv. 287), 102 A.L.R. 914, 56 S. Ct. 312, it was held that the Federal Agricultural Adjustment Act of May 12, 1933, in setting up a plan to regulate and control agricultural production, unconstitutionally invades the reserved rights of the states.

Annotation: Federal and state Agricultural Adjustment Acts. 102 A.L.R. 937.

Attachment — *growing crops.* In Kelly v. Stockgrowers Credit Corp. — N. D. —, 103 A.L.R. 460, 263 N. W. 717, it was held that under our statute growing crops are subject to attachment.

Annotation: Growing crops as subject to levy and seizure under attachment or execution. 103 A.L.R. 464.

Automobiles — *municipal liability for ice on abandoned trolley track.* In Green v. Mechanicville, 269 N. Y. 117, 102 A.L.R. 673, 199 N. E. 26, it was held that a municipal corporation is not liable to a motorist whose car skids upon ice formed upon the rails of a trolley track, laid flush with the pavement, by reason of the facts that by reason of their disuse their removal, under the terms of the trolley company's franchise, might have been compelled by the municipality, and that, being a more efficient conductor of heat than the contiguous pavement, ice formed thereon in a greater degree than on the pavement.

Annotation: Abandonment or discontinuance of use of rails, poles, wires, or other obstructions having previous lawful situs in street as affecting liability of municipality or another for personal or property damage resulting therefrom. 102 A.L.R. 677.

Bankruptcy — *life insurance as asset.* In Curtis v. Humphrey, 103 A.L.R. 236, 78 F. (2d) 73, it was held that where at the time of the filing of the petition in bankruptcy a policy of insurance on the life of the bankrupt's husband, payable to the bankrupt, is pledged to the insurer to secure a loan in excess of its cash-surrender value, the policy is not an asset of the bankrupt estate, although prior thereto it has been absolutely assigned to the bankrupt, so that upon the death of the insured subsequently to the discharge in bankruptcy, and the reopening of the estate, the proceeds of the policy belong to the bankrupt rather than to the trustee.

Annotation: Life insurance as assets under Bankruptcy Act. 103 A.L.R. 239.

Banks — *effect of insolvency on fiduciary relation of.* In Re Strasser, — Iowa, —, 102 A.L.R. 117, 262 N. W. 137, it was held that where a bank

or trust company empowered by statute to act in a fiduciary capacity goes into the hands of a receiver, the fiduciary office held by it becomes vacant.

Annotation: Insolvency of, or appointment of receiver or other liquidator for, corporation, as affecting its status as executor, administrator, guardian, or trustee. 102 A.L.R. 124.

Banks — *liability on stock held by holding company.* In Metropolitan Holding Co. v. Snyder, 103 A.L.R. 912, 79 F. (2d) 263, it was held that the contingent liability on shares of stock in a national bank under the Federal statute making shareholders of a national banking association individually responsible for all of its debts, to the amount of their stock therein, cannot be circumvented by the organization of a corporation to purchase and hold shares of such stock, but the actual and beneficial owners thereof are liable as stockholders.

Annotation: Stockholders' statutory liability as affected by fact that stock is in name of a holding company. 103 A.L.R. 921.

Banks — *stockholders' liability as affected by defects in organization of.* In Bethea v. Allen, 177 S. C. 534, 102 A.L.R. 320, 181 S. E. 893, it was held that holders of stock in state and national banks, who have agreed to a consolidation thereof by cancelation of the old stock and the issuance of stock in a new corporation on the basis of the interest of each stockholder in the property as a whole, cannot avoid statutory liability as stockholders of the new bank, although a legal consolidation is not effected because of failure to comply with the statute authorizing the consolidation, and stock in the new bank is not actually issued, where the assets are commingled and the new institution proceeds to do a general banking business as a de facto corporation, and is recognized as a bank by the state banking department.

Annotation: Stockholders' statutory liabilities as affected by alleged defects or irregularities in organization of corporation. 102 A.L.R. 327.

Bills and Notes — *presenting instruments falling due on Saturday.* In Long v. Alder, — Tenn. —, 102 A.L.R. 433, 88 S. W. (2d) 802, it was held that presentment to the maker for payment, upon a Saturday, of a note falling due on that date, discharges an indorser where a statute provides that instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day.

Annotation: Construction, application, and effect of provision of Uniform Negotiable Instruments Law, or other statute, relating to maturity or time for presentment of negotiable paper which falls due on Saturday, Sunday, or holiday. 102 A.L.R. 437.

Chattel Mortgage — *refiling in county to which property is removed.* In Burkdoll v. Simpson, 173 Okla. 397, 103 A.L.R. 195, 48 P. (2d) 1072, it was held that where a chattel mortgage is properly filed in the county where the mortgaged property was located at the time the mortgage was made, as provided by § 11,277, Okla. Stat. 1931, and thereafter the property is permanently removed to another county with the consent of the mortgagee, it is not necessary to refile the mortgage in the county to which the property is removed, under the provisions of § 11,279, Okla. Stat. 1931, or other statutes, in order to preserve the validity of the mortgage as against creditors whose claims arose prior to the execution of the mortgage.

Annotation: Necessity of refiling chattel mortgage in other county or district within same state upon removal of property or mortgagor from county or district in which it was originally properly filed. 103 A.L.R. 198.

Competency — *effect of judgment of sister state.* In Re Jones, — N. D. —, 102 A.L.R. 441, 263 N. W. 160, it was held that an adjudication of competency in one state does not abrogate an adjudication of incompetency previously had in another state.

Annotation: Extraterritorial effect and recognition of adjudication of competency or incompetency, sanity or insanity. 102 A.L.R. 444.

Conditional Sale — *corporate reorganization of purchaser.* In Re Lake's Laundry, 102 A.L.R. 247, 79 F. (2d) 326, it was held that the rights of sellers of personal property in New York, in which state the Uniform Conditional Sales Act is in force, under conditional sales contracts providing that the property shall remain that of the sellers until paid for, to repossess the property on default of the vendee, cannot be impaired by the filing by the latter of a petition for reorganization under § 77B of the Bankruptcy Act, providing for corporate reorganization and giving the court in which the reorganization proceeding is pending exclusive jurisdiction of the debtor and his property.

Annotation: Conditional sales in relation to reorganization of corporations under § 77B of the Bankruptcy Act. 102 A.L.R. 250.

Constitutional Law — *changing course of descent.* In Ostrander v. Preece, 129 Ohio St. 625, 103 A.L.R. 218, 196 N. E. 670, it was held that a legislative enactment, repealing, modifying, or changing the course of descent and distribution of property and the right to inherit or transmit property is not an unlawful interference with or deprivation of vested rights, and, unless expressly inhibited by constitutional provision, is to be deemed valid.

Annotation: Constitutionality of statute repealing, modifying, or changing course of descent and distribution of property. 103 A.L.R. 223.

Constitutional Law — *extension of time for payment of special assessments.* In Hoehamer v. Elmwood Park, 361 Ill. 422, 102 A.L.R. 196, 198 N. E. 345, it was held that a statute authorizing the extension of time for payment of instalments of special assessments against property benefited by a local improvement and the refunding of bonds issued in anticipation of the payment of such instalments does not, in changing the maturity dates of instalments, unconstitutionally impair contract obligations, since the confirmation of the assessment constitutes a judgment, and not a contract with the property owner to pay the instalments as they become due.

Annotation: Power of municipal corporation to refund special assessment bonds. 102 A.L.R. 202.

Corporations — *liability on contracts of subsidiary.* In Gledhill v. Fisher & Co. 272 Mich. 353, 102 A.L.R. 1042, 262 N. W. 371, it was held that a parent corporation should not be held liable on the contracts of its subsidiary unless the parent corporation has exercised its control over the subsidiary in such a manner as to defraud and wrong the complainant and an unjust loss or injury will be suffered by the complainant as the result of such domination unless the parent corporation be held liable.

Annotation: Liability of holding corporation on contracts of subsidiary. 102 A.L.R. 1054.

Courts — *injunctions against suits.* In Trees v. Glenn, 319 Pa. 487, 102 A.L.R. 304, 181 A. 579, it was held that an injunction may be issued by a court of one judicial district of the state to restrain a litigant from proceeding by bill in equity in another judicial district of the state, on the

ground that the claim asserted in that other district has been adjudicated and finally determined against the plaintiff by the court issuing the injunction, and on the further ground that the second suit is vexatious.

Annotation: Power to enjoin party from prosecuting or commencing an equitable suit. 102 A.L.R. 308.

Covenants and Conditions — *restrictive covenant change of conditions.* In Barton v. Moline Properties, 121 Fla. 683, 103 A.L.R. 725, 164 So. 551, it was held that allegations of a bill in equity to remove the cloud on title created by restrictions imposed by deed on property conveyed, limiting the use of lots in a subdivision to one-family dwellings with garage, to cost not less than a stated sum, subject to approval of plans, specifications, and location by the original grantor, its successors, and assigns, that by reason of the growth of the city since the restrictions were imposed and the use of neighboring property not part of the subdivision for business purposes, including a casino and miniature golf course, and the shortening of the lots by the widening of an adjacent street, quiet and privacy has been rendered impossible, and the value and use of the premises for residential purposes destroyed, are sufficient to entitle complainant to a final decree on testimony taken after a decree pro confesso in support of such allegations.

Annotation: Change of neighborhood in restricted district as affecting restrictive covenant. 103 A.L.R. 734.

Divorce — *bringing in other parties in suit for.* In Elms v. Elms, — Cal. (2d) —, 102 A.L.R. 811, 52 P. (2d) 223, it was held that either party to a divorce action may bring in third parties claiming an interest in property alleged to be community, in order that their claims thereto may be adjudicated in the divorce action.

Annotation: Third person as proper party by intervention or otherwise to a suit for divorce involving property rights. 102 A.L.R. 814.

Easements — *effect of substitution of busses on street railways.* In Kansas Electric Power Co. v. Walker, 142 Kan. 808, 102 A.L.R. 387, 51 P. (2d) 1002, it was held that an ordinary right of way of an electric street car line across private property within a city, given by deed which did not contain a reversion clause, does not revert to the grantor or the abutting landowners when the method of transportation of passengers is changed from an electric street car system to a gasolene-driven motorbus line, and such a change, without being accompanied with serious and heavy additional burdens on the grantor or the abutting owners, does not constitute an abandonment.

Annotation: Change from street cars to motorbusses as affecting rights as between street railway companies and abutting owners or owners across whose property the company has a right of way. 102 A.L.R. 391.

Evidence — *confidential communication to newspaper reporter.* In People v. Sheriff of New York County, 269 N. Y. 291, 102 A.L.R. 769, 199 N. E. 415, it was held that in absence of statute, a newspaper reporter called as a witness before a grand jury cannot lawfully refuse to answer pertinent questions relating to communications made to him as a reporter, on the ground that such communications are privileged.

Annotation: Privilege against use as evidence of communications made to reporter, editor, or publisher of newspaper or magazine. 102 A.L.R. 771.

Evidence — *mental condition based upon handwriting.* In Gibbons v. Redmond, 142 Kan. 417, 103 A.L.R. 893, 49 P. (2d) 1035, the issue of fact

was whether a testator had mental capacity to make a will. A handwriting expert was permitted to testify that the testator was not in the same mental condition when he signed the will that he was in when normal signatures were made, that the signature to the will indicated the testator was in a state of mental exhilaration when the will was signed, and that omission from the signature of part of the testator's name indicated a mental lapse at that point. Held, under the facts appearing in the opinion, the testimony was properly admitted.

Annotation: Competency of testimony as to one's mental condition, based upon handwriting. 103 A.L.R. 900.

Evidence — *presumption against suicide as.* In Jefferson Standard Life Insurance Company v. Clemmer, 103 A.L.R. 171, 79 F. (2d) 724, it was held that the presumption against suicide is not evidence in an action on a life insurance policy, but is a rule of law which requires the conclusion, in the event of an unexplained death by violence, that the death was not suicidal until credible evidence of self-destruction is offered, upon the production of which the presumption disappears and the trier of facts passes upon the issues in the usual way.

Annotation: Presumption against suicide as evidence. 103 A.L.R. 185.

Evidence — *presumption of ownership of automobile.* In Henry v. Condit, — Or. — 103 A.L.R. 131, 53 P. (2d) 722, it was held that no conclusive presumption of ownership arises from the presence of one's license plates upon an automobile.

Annotation: Presumption of ownership of automobile by one in whose name it is registered or whose license plates it bears. 103 A.L.R. 138.

Evidence — *voluntary nature of confession.* In McLemore v. State, — Ga. —, 102 A.L.R. 634, 182 S. E. 618, it was held that to render an alleged confession admissible as such, it must be made affirmatively to appear that the inculpatory statement was not induced by the slightest hope of benefit or the remotest fear of injury.

Annotation: Presumption and burden of proof as to voluntariness of nonjudicial confession. 102 A.L.R. 641.

Excessive Damages — *personal injuries.* In Berg v. Griffiths, 127 Neb. 501, 102 A.L.R. 1124, 256 N. W. 44, a verdict for $4,683.33 was sustained where it appeared that the plaintiff, a woman school teacher 26 years old, had suffered a permanent 50 per cent disability from cuts on wrist which severed tendons controlling three fingers of right hand interfering with her work and leaving an ugly scar.

Annotation: Excessiveness of verdict in action by person injured for injuries not resulting in death (for years 1926 to 1935). 102 A.L.R. 1125.

Income Taxes — *gain from exchange of stock.* In Bryant v. Commissioner of Corporations and Taxation, — Mass. —, 102 A.L.R. 1, 197 N. E. 509, it was held that a transaction whereby an owner of stock exchanges it for stock in a different corporation constitutes a sale of the stock and a purchase of other stock rendering the party making the exchange taxable on any gain accruing thereunder, under an income tax statute subjecting to taxation the excess of gains over losses received from purchases or sales of intangible personal property.

Annotation: Income tax in respect of exchange of properties. 102 A.L.R. 6.

Income Tax — *segregation of trusts.* In Commissioner of Internal Revenue v. McIlvaine, 78 F. (2d) 787, 102 A.L.R. 252, it was held that the

division of a single trust into several trusts by amendment of the trust instrument is none the less effective to make the income taxable to the several trusts because the sole purpose of the change was to bring about a reduction in Federal income tax on the income from the trust property.

Annotation: Income tax as affected by existence or segregation of separate trusts. 102 A.L.R. 257.

Insurance — *promise to divide proceeds.* In Legrande v. Legrande, 178 S. C. 230, 102 A.L.R. 582, 182 S. E. 432, it was held that a promise made by the beneficiary of a life insurance policy to the insured, who had the right to change the beneficiary at any time, to divide the proceeds of the policy with the wife of the insured, is upon a sufficient consideration.

Annotation: Validity and enforceability of promise by beneficiary of life insurance to insured to pay proceeds, in whole or part, to third person. 102 A.L.R. 588.

Land Contract — *recovery by vendee of purchase money.* In Lake v. Bernstein, 215 Iowa, 777, 102 A.L.R. 846, 246 N. W. 790, it was held that a vendee in default under a land contract cannot recover back from the vendor, who has in all respects performed his part, money paid thereunder, even though the contract does not provide for a forfeiture.

Annotation: Vendee's right to recover amount paid under executory contract for sale of land. 102 A.L.R. 852.

Life Tenant — *present worth.* In Miracle v. Miracle, 260 Ky. 624, 102 A.L.R. 964, 86 S. W. (2d) 536, it was held that when property owned by a life tenant and remaindermen is voluntarily sold by them, the life tenant is not, in the absence of an agreement as to the disposition of the proceeds, absolutely entitled to such portion of the

proceeds as represents the present worth of his life estate calculated upon his expectancy of life as indicated by mortality tables, but may take only the income from the reinvested corpus until the termination of his interest by death.

Annotation: Commutation of life tenant's interest in fund realized from sale of property into estimated present value. 102 A.L.R. 969.

Liquor License — *fee in excess of cost of regulation.* In Fylken v. City of Minot, — N. D. —, 103 A.L.R. 320, 264 N. W. 728, it was held that the rule that a purely regulatory exaction imposed on a legitimate and useful business or occupation cannot be sustained if it result in a return unreasonably disproportionate to the cost of regulation does not apply where the exaction is imposed on an occupation which, while it is tolerated, is, nevertheless, recognized as being hurtful to public morals, productive of disorder, or injurious to the public; and in such case the exaction imposed may be such as to place a reasonable restriction upon the number, and determine the character and responsibility of those engaging in the business.

Annotation: Necessity of presenting claim against decedent's estate as affected by executor's or administrator's personal duty or obligation to claimant. 103 A.L.R. 327.

Mechanics' Liens — *contract with one other than the owner.* In Braden Co. v. Lancaster Lumber Co. 170 Okla. 30, 102 A.L.R. 230, 38 P. (2d) 575, it was held that when a laborer performs labor and when a materialman furnishes material for the construction of improvements on a lot under a contract with one who is not the owner of the lot, the laborer and the materialman have liens upon the improvements, separately from the real estate, which liens are superior to a vendor's lien for the unpaid purchase price of the lot.

Annotation: Interest of vendor under executory contract for sale of realty as subject to mechanic's lien for labor or materials furnished to purchaser. 102 A.L.R. 233.

Negligence — *trespassers.* In Ehret v. Scarsdale, 269 N. Y. 198, 102 A.L.R. 211, 199 N. E. 56, it was held that the rule that the only duty owed by a landowner to a trespasser is to abstain from intentional, wanton, or wilful injury, does not exonerate a realty company from liability for the asphyxiation of a trespasser in a house owned by it, by gas escaping into the house from a street drain in constructing which it had negligently inclosed a damaged gas main.

Annotation: Rule of property owner's immunityfrom liability for injury to or death of trespasser, absent wanton or wilful conduct, as affected by fact that danger zone extends beyond the property. 102 A.L.R. 218.

Prohibition — grand jury. In Fitts v. Superior Court, — Cal. —, 102 A.L.R. 290, 51 P. (2d) 66, it was held that prohibition will not lie to stay proceedings by a court upon an indictment because of irregularities in the selection, drawing, or impaneling of the grand jury finding the indictment which do not affect the jurisdiction of the court.

Annotation: Prohibition as remedy in case of defective indictment, information, or complaint. 102 A.L.R. 298.

Street Railways — *contributory negligence of motorist colliding with.* In Public Service Co. of Indiana v. Schneider's Admr. — Ky. —, 102 A.L.R. 712, 85 S. W. (2d) 676, it was held that a motorist must be deemed as a matter of law to have been guilty of contributory negligence in colliding head-on at night with an ade-

quately lighted street car when vision was unobstructed, although a 3-foot jog in the track to accommodate it to a narrowing of the roadway had the effect of bringing him, in continuing a course originally safely outside of the track, astride the rail, and by reason of the grade it may have been difficult to distinguish between the street car's lights and the street lights, where the street car was proceeding at a leisurely rate of speed, was stopped by the motorman when he saw that the automobile was not getting off the track, and the collision occurred 160 feet beyond the jog.

Annotation: Liability for collision between street car and vehicle driven ahead of or toward it along or close to the track. 102 A.L.R. 716.

Taxation — *distinction between property and privilege taxes.* In Ingels v. Riley, — Cal. (2d) —, 103 A.L.R. 1, 53 P. (2d) 939, it was held that generally, the function of a property tax is to raise revenue, and no condition or restriction is imposed thereby upon the use of the property taxed, while a privilege tax, although also passed to raise revenue, is imposed upon the right to exercise a privilege, and its payment is made a condition precedent to the exercise of the privilege involved.

Annotation: What is a property tax as distinguished from excise, license, and other taxes. 103 A.L.R. 18.

Trial — *rebuttal of presumption.* In Worth v. Worth, 48 Wyo. 441, 103 A.L.R. 107, 49 P. (2d) 649, it was held that determination of whether or not a presumption has been dissipated should be left to the jury unless the presumption is dissipated as matter of law. Applying this rule the court reached the conclusion in an action by a wife against the parents of her husband for alienation of affections, where the inference of malice is not necessarily required by the evidence, a

Case and Comment
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requested instruction should be given to the effect that the law recognizes the right of the parents to advise and counsel their son in respect to his domestic affairs, and presumes that counsel and advice given by parents to a son is given in good faith and from proper motive, and that the burden is upon the plaintiff to establish by a preponderance of the evidence that it was not given in good faith, but maliciously.

Comment Note: Right or duty of court to instruct jury as to presumptions. 103 A.L.R. 126.

Venue — *adverse interest of inhabitants of municipality.*—In Olson v. City of Sioux Falls, — S. D. —, 103 A.L.R. 1022, 262 N. W. 85, it was held that the adverse interest of the inhabitants of a city renders proper a change of venue of an action brought against the city, asked on the ground that there is reason to believe that an impartial trial cannot be had in the county in which the city is located, where the trial court is justified in concluding that the number of jurors from such city on a panel would be so proportionately large that an impartial jury could not be selected.

Annotation: Adverse interest of inhabitants of municipality as ground of or justification for change of venue of civil action against it. 103 A.L.R. 1025.

View by Jury — *condemnation proceedings.* In Champlin Refining Company v. Donnell, 173 Okla. 527, 103 A.L.R. 157, 49 P. (2d) 208, it was held that a view by the jury of property, the subject of the action, is discretionary with the trial court, and his ruling thereon will not be reversed on appeal in the absence of a showing of abuse of discretion.

Annotation: Right to have view by jury in condemnation proceedings. 103 A.L.R. 163.

Waste — *lien holder's right to restrain.* In State v. District Court, — Mont. —, 103 A.L.R. 376, 53 P. (2d) 107, it was held that one having a specific lien against realty has a right to restrain the commission of waste thereon by the owner.

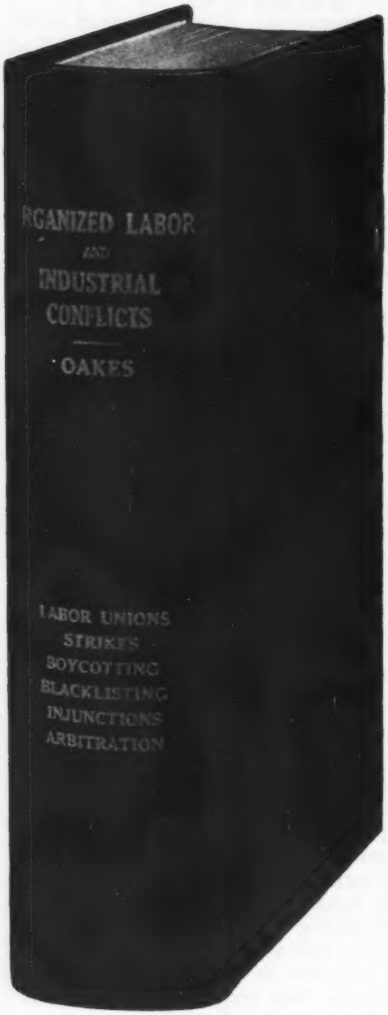
Annotation: Right of holder of tax or other lien on real property, other than mortgage, to restrain waste. 103 A.L.R. 384.

Wills — *existence of joint will.* In Wilson v. Starbuck, — W. Va. —, 102 A.L.R. 485, 182 S. E. 539, it was held that where the circumstances surrounding the making of separate but identical wills by husband and wife by the terms of which each was made the sole beneficiary of the other are such that all the elements of the making of a joint will are present, the wills will be regarded as tantamount to a joint will and their reciprocal provisions as evidencing a contractual agreement between the makers.

Annotation: Joint and mutual wills. 102 A.L.R. 491.

ORGANIZED LABOR *and* INDUSTRIAL CONFLICTS

By EDWIN S. OAKES



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Modest.—The judge who was about to deliver a severe sentence loked at the defendant in the dock and began: "This robbery was consummated in an adroit and skilful manner."

The prisoner blushed and interrupted: "Come now, your honor. No flattery, please."—*Column Review.*

No Reflection.—"Pardon me," said the stranger, "are you a resident here?"

"Yes," was the answer. "I've been here goin' on fifty years. What kin I do for you?"

"I am looking for a criminal lawyer," said the stranger. "Have you any here?"

"Well," said the other, "we're pretty sure we have, but we can't prove it."—*Exchange.*

One's Almost too Many.—First Lawyer—"What do you think of our two candidates for mayor?"

Second Lawyer.—"Well, I'm glad only one can be elected."

No Time to Notice.—Bystander—"Did you get the number of that car that knocked you down, madam?"

Victim—"No, but the hussy that was driving it wore a three-piece tweed suit, lined with Canton crepe, and she had on a periwinkle hat, trimmed with artificial cherries."—*The Mutual Magazine.*

We.—The bride of a few weeks noticed that her husband was depressed.

"Gerald, dearest," she said, "I know something is troubling you, and I want you to tell me what it is; your worries are not your worries now, they are our worries."

"Oh, very well," he said. "We've just had a letter from a girl in New York, and she's suing us for breach of promise."

—*Montreal Star.*

Ahead of Her.—"Remember, darling, you won't always be a junior clerk in a moldy old solicitor's office."

"That's a fact! I've already got a week's notice."—*The Humorist (London).*

The Golden Egg.—Lawyer—"There goes the only woman I ever loved."

Friend—"Why don't you marry her?"

Lawyer—"I can't afford to. She's my best client."

Handy.—In a Mexican prison a convicted murderer was told by his wife that he was doomed to die unless he could get a pardon from the Governor of the State.

She asked: "How do you go about getting a pardon from the Governor?"

"That's easy," he replied, and raised his voice: "Hey, Governor, how about a pardon?"

"Sure," was the reply.

It came from the next cell.—*Troy Times Record.*

Keep Off.—Myra Kingsley, the astrologer, who has just returned from a trip South, sends us a transcript of a sign which originally adorned a Kentucky farmer's acres:

NOTIS

Trespassers will be percecuted to the full extent of two mongrel dogs which aint never been too sociable with strangers and one double br'l shotgun which aint loaded with sofa pillows. DAM if I aint gittin tired of this hell raisin' round my place.

A local sporting-goods shop now has the

original, she says, in their gun-room.—*Lucius Beebe, New York Herald Tribune.*

Safety First.—A candidate for the police force was being verbally examined. "If you were by yourself in a police car and were pursued by a desperate gang of criminals in another car doing forty miles an hour along a lonely road, what would you do?" The candidate looked puzzled for a moment. Then he replied: "Fifty."—*Exchange.*

New Style.—The saddest words of tongue or pen
Were once these four:
"It might have been."
But nowadays it is not so,
The new ones are: "We'll let you know."—*Judge.*

Retrospective Rights.—"Look here," said the irate traveling man to the small-town hotel-keeper, "don't you know that roller-towels in hotels have been prohibited in this State for three years?"

"Sure," replied the hotel man, "but that there towel was put up before the law was passed."—*Exchange.*

Treats Them Fair.—Judge: "How do you earn your living? Do you pick pockets?"

Prisoner: "No, sir, I take 'em as they come."—*The Rail.*

Another One on the Canny Scots.—A young lawyer, wishing to know his fate at once, telegraphed a proposal of marriage to the girl of his choice. After spending the day hanging about the telegraph office, he was finally rewarded, late in the evening, by receiving an answer in the affirmative.

"If I were you, I'd think twice before marrying a girl that kept me waiting all day for an answer," said the postmaster.

"Na, na," retorted the Scot. "The lass who waits for the cheap night rates is the lass for me."—*The Rail.*

The Danger of Cross-examination.—Lawyer (cross-examining witness in divorce action where cruelty was ground) "Do you know how easy it is to make a delicate woman suffer?"

Witness: "I've made a thousand women suffer in my time."

Lawyer: "Oh, what a brute you must be."

Witness: "Not at all, you see, Im a dentist."—*Exchange.*

He Forgot.—He was an unusual lawyer and very careful about his own health. He brushed his teeth twice a day with a nationally advertised tooth brush.

The doctor examined him twice a year.

He wore rubbers when it rained.

He slept with the windows open.

He stuck to a diet with plenty of fresh vegetables.

He relinquished his tonsils and traded in several wornout glands.

He golfed, but never more than 18 holes.

He never smoked, drank, or lost his temper.

He did his daily dozen daily.

He got at least eight hours sleep each night.

The funeral will be held next Wednesday. He is survived by 18 specialists, four health institutes, six gymnasiums, and numerous manufacturers of health foods and antiseptics.

He had forgotten about trains at grade crossings.—Traffic Tidings.

Who's the Guy.—Few visitors to London fail to see No. 10 Downing Street, the plain, unpretentious appearance of which usually surprises them.

Two law students from New York were examining the exterior of the house and indulging in picturesque but disparaging criticism.

Outside stood a car.

"What a place for a Prime Minister," one of them exclaimed. "And as for that car—waal, I reckon it would pass any day for a second-hand hearse."

At this moment a well-groomed man emerged from No. 10, entered the car, and drove off.

"Say, who was that guy?" asked one of the students of a policeman standing by.

"The American Ambassador," answered the constable.—*Troy Times Record.*

Rapid Transportation. — St. Peter: "How did you get up here?"

Lawyer: "Flu."

His Problem.—Into the night court the other evening, they marched a man who had all the earmarks of a professional tough guy. This chap was as desperate-looking as any gorilla you've ever seen.

The magistrate looked down at the surly prisoner.

"Well," asked His Honor, "guilty or not guilty?"

The prisoner scowled.

"Figure it out yerself," he snarled. "That's what yer gettin' paid for!"—*Mark Hellinger in The New York American.*

Incompetent Witnesses.—The trial involved a building contract that was drawn up by a layman. While the layman was on the stand testifying, counsel for the defense interposed an objection stating that the question was "incompetent, irrelevant and immaterial."

The counsel for the plaintiff immediately jumped up and said, "I feel the witness is incompetent too, but still he was the one who drew up the contract."

Contributor: C. F. Schlosstein,
Seattle, Wash.

Cruel Judicial Deliberation.—A secretary had just brought to our desk the "rough" draft of a brief, which closes with this, "a careful examination of this record in the light of cruel judicial deliberation, will clearly demonstrate that this is not a case justifying interference with the verdict of the jury."

Having in mind the best interests of the client, it was changed from "cruel" to "cool" before it went to the printers."

Contributor: Stuart B. White,
Niles, Mich.

The Period.—"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the Spring of hope, it was the Winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way—in short, the period was so far like the present period that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only."

These words, written by CHARLES DICKENS, are the beginning of his work, "A Tale of Two Cities," which is a story of the French revolution and incidents that led up to it.

His next paragraph the reader may

change to the present day scene and Americanize it for his pleasure:

"There were a king with a large jaw and a queen with a plain face on the throne of England; there were a king with a large jaw and a queen with a fair face, on the throne of France. In both countries it was clearer than crystal to the lords of the State preserves of loaves and fishes, that things in general were settled forever.

"It was the year of Our Lord one thousand seventeen hundred and seventy-five. . . ."

Were some present day chronicler setting down the state of times, the description with a few minor alterations, could not be more accurate. And that was how matters stood as the French revolution was brewing!

We should have a care—*The Financial Age.*

Literal Interpreting.—Mike, a Slav recently arrived from Europe said to his Boss in the mill, the day before Ascension Day.

Mike: "Mr. Boss, me no work tomorrow."

Boss: "What's the matter Mike, why you no work tomorrow?"

Mike: "Me got holiday."

Boss: "What kind holiday you got Mike?"

Mike: "Me got church holiday."

Boss: (Who professed to be a good churchman, after much reflection). "What kind church holiday you got tomorrow, Mike?"

Mike: (Deficient in the English vocabulary, somewhat non-plussed). "You know, Boss, Jesus Christ moving upstairs tomorrow."

Contributor: Joseph P. Vilk,
Butte, Mont.

Conditional Verdict.—Summary Proceedings had been brought before a country Justice of the Peace to dispossess tenants from a farm whose term of occupancy had expired March 1st. The tenants answered the petition alleging that they were entitled to possession under an oral agreement to work the farm for another year on shares. The issues were tried before a jury who after three hours deliberation handed to the Court the following written findings: "Jury reaches a verdict:—That the plain-

tiffs pay the costs of the Court and the defendants to vacate premises in ten days, otherwise we fail to come to an agreement."

Contributor: Bert T. Baker,
Ithaca, N. Y.

Precautions.—Upon being asked by a youthful member of the Bar for certain rules and customs to observe after opening his new office, a veteran at our local Bar answered, "Each morning approach your office door cautiously and as you insert the key, pray that the landlord has not changed the lock on account of non-payment of rent. Then cross your fingers as a good luck charm and pick up the mail, there might be a small check, test the 'phone to see that service is not temporarily disconnected, try the electric lights for the same reason, and then and only then are you ready for a day's work.

Contributor: Howard H. Bates,
Indianapolis, Ind.

Retaliation.—Dear Sir: I find that witnesses saw Mr. Jones shoot some of my chickens on my own premises, one was in my strawberry patch. He shot from his field across the line. If this is permissible let me know and I'll shoot his old black cow. Please advise.

Sincerely, H. D.

Contributor: Charles Lynch,
Woodsfield, Ohio.

Plain Terms.—Our contributor clipped this dispatch from Kansas City, from the St. Louis Globe Democrat.

"Transcript of proceedings in a Circuit Court damage suit here today:

Lawyer: Doctor, in popular language, please tell the jury the cause of the patient's death.

Doctor: In plain language he died of an oedema of the brain that followed a cerebral thrombosis or possibly embolism that followed. In turn, arteriosclerosis combined with the effects of gangerenous cystitis—

A Juror: Well, I'll be d———d!

The Judge: Ordinarily I would fine a juror for saying anything like that, but I can't in this instance because the Court was thinking the same thing!"

Contributor: Morris Anderson,
Hannibal, Mo.

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